

ORIGINAL

John B. Sganga (State Bar No. 116,211)
 Frederick S. Berretta (State Bar No. 144,757)
 Joshua J. Stowell (State Bar No. 246,916)
 KNOBBE, MARTENS, OLSON & BEAR, LLP
 550 West C Street
 Suite 1200
 San Diego, CA 92101
 (619) 235-8550
 (619) 235-0176 (FAX)

Vicki S. Veenker (State Bar No. 158,669)
 Adam P. Noah (State Bar No. 198,669)
 SHEARMAN & STERLING LLP
 1080 Marsh Road
 Menlo Park, CA 94025
 (650) 838-3600
 (650) 838-3699 (FAX)

Attorneys for Plaintiffs
 THE LARYNGEAL MASK COMPANY LTD.
 and LMA NORTH AMERICA, INC.

**IN THE UNITED STATES DISTRICT COURT
 FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

'07 1988 DMS (NLS)

THE LARYNGEAL MASK COMPANY
 LTD. and LMA NORTH AMERICA, INC.,

Plaintiffs,

v.

AMBU A/S, AMBU INC., AMBU LTD.,
 and AMBU SDN. BHD.,

Defendants.

Civil Action No.

**COMPLAINT FOR INFRINGEMENT OF
 UNITED STATES PATENTS NOS.
 5,303,697 AND 7,156,100**

DEMAND FOR JURY TRIAL

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiffs The Laryngeal Mask Company Ltd. and LMA North America, Inc., by and
 through the undersigned attorneys, hereby complain of Defendants Ambu A/S, Ambu Inc.,
 Ambu Ltd., and Ambu Sdn. Bhd. for infringement of United States Patents Nos. 5,303,697 and
 7,156,100, and allege as follows:

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JURISDICTION AND VENUE

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2 1. This is an action for patent infringement arising under the patent laws of the
3 United States, Title 35, United States Code, and more particularly 35 U.S.C. §§ 271 and 281.

4 2. This Court has jurisdiction over the subject matter of this action pursuant to 28
5 U.S.C. §§ 1331 and 1338(a).

6 3. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b), (c) and
7 (d), and 1400(b).

8 **THE PARTIES**

9 4. Plaintiff The Laryngeal Mask Company Ltd. ("LMC") is a corporation
10 organized and existing under the laws of the Republic of Seychelles with its principal place of
11 business at Le Rocher, Mahé, Seychelles.

12 5. LMC is the owner by assignment of United States Patent No. 5,303,697, duly
13 and lawfully issued on April 19, 1994 ("the '697 patent"), and United States Patent No.
14 7,156,100 ("the '100 patent"), duly and lawfully issued on January 2, 2007.

15 6. Plaintiff LMA North America, Inc. ("LMNA") is a corporation organized and
16 existing under the laws of the State of Delaware with its principal place of business at 4660
17 La Jolla Village Drive, San Diego, California 92122, and an affiliate of LMC. LMNA is the
18 exclusive licensee of the '697 and '100 patents under exclusive license from LMC.

19 7. Upon information and belief, Defendant Ambu A/S ("Ambu Denmark") is a
20 corporation organized and existing under the laws of the Kingdom of Denmark with its
21 principal place of business at Baltorpbakken 13, DK-2750 Ballerup, Denmark.

22 8. Upon information and belief, Defendant Ambu Inc. ("Ambu U.S.") is a
23 corporation organized and existing under the laws of the State of Delaware with its principal
24 place of business at 6740 Baymeadow Drive, Glen Burnie, Maryland 21060, and a subsidiary
25 of Ambu Denmark that is under the control of Ambu Denmark.

26 9. Upon information and belief, Defendant Ambu Ltd. ("Ambu China") is a
27 corporation organized and existing under the laws of the People's Republic of China with its
28 principal place of business at Warehouse & Process Complex Building, No. C, Xiang Yu

1 F.T.Z. Xiamen, 361006 China, and a subsidiary of Ambu Denmark that is under the control
2 of Ambu Denmark.

3 10. Upon information and belief, Defendant Ambu Sdn. Bhd. ("Ambu Malaysia")
4 is a corporation organized and existing under the laws of Malaysia with its principal place of
5 business at Lot 69B, Lintang Bayan Lepas 6, Phase IV, 11900 Penang, Malaysia, and a
6 subsidiary of Ambu Denmark that is under the control of Ambu Denmark.

7 11. Upon information and belief, Defendants Ambu Denmark, Ambu U.S., Ambu
8 China, and Ambu Malaysia (collectively, the "Ambu Defendants") manufacture, distribute,
9 import, offer to sell, and sell in the United States certain laryngeal mask airway devices that
10 Plaintiffs allege infringe the '697 and '100 patents, including the Ambu AuraOnce, Aura40,
11 AuraFlex, and AuraStraight brands of laryngeal mask airway devices.

12 12. Upon information and belief, the Ambu Defendants do business in this judicial
13 district and have committed acts of infringement in this judicial district.

14 **FIRST CLAIM FOR RELIEF - INFRINGEMENT OF THE '697 PATENT**

15 13. Plaintiffs reallege and incorporate herein by reference the allegations stated in
16 paragraphs 1-12 of this Complaint.

17 14. Upon information and belief, the Ambu Defendants, through their
18 manufacture, distribution, importation, offers to sell, and sales in the United States of certain
19 laryngeal mask airway devices, including their Ambu AuraOnce, Aura40, AuraFlex, and/or
20 AuraStraight brands of laryngeal mask airway devices, have directly and indirectly infringed
21 and are continuing to directly and indirectly infringe one or more claims of the '697 patent,
22 and will continue to do so unless enjoined by this Court.

23 15. Upon information and belief, the Ambu Defendants had actual knowledge of
24 the '697 patent prior to their alleged acts of infringement.

25 16. As a direct and proximate result of the Ambu Defendants' infringement of the
26 '697 patent, Plaintiffs have been and continue to be damaged.

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1 17. Upon information and belief, the Ambu Defendants' infringement of the '697
2 patent has been, and will continue to be, willful and deliberate, making this an exceptional
3 case under 35 U.S.C. § 285.

4 18. Plaintiffs have been and will continue to be irreparably harmed by the Ambu
5 Defendants' infringement of the '697 patent unless enjoined by this Court.

6 **SECOND CLAIM FOR RELIEF - INFRINGEMENT OF THE '100 PATENT**

7 19. Plaintiffs reallege and incorporate herein by reference the allegations stated in
8 paragraphs 1-12 of this Complaint.

9 20. Upon information and belief, the Ambu Defendants, through their
10 manufacture, distribution, importation, offers to sell, and sales in the United States of certain
11 laryngeal mask airway devices, including their Ambu AuraOnce, Aura40, AuraFlex, and/or
12 AuraStraight brands of laryngeal mask airway devices, have directly and indirectly infringed
13 and are continuing to directly and indirectly infringe one or more claims of the '100 patent,
14 and will continue to do so unless enjoined by this Court.

15 21. Upon information and belief, the Ambu Defendants had actual knowledge of
16 the '100 patent prior to their alleged acts of infringement.

17 22. As a direct and proximate result of the Ambu Defendants' infringement of the
18 '100 patent, Plaintiffs have been and continue to be damaged.

19 23. Upon information and belief, the Ambu Defendants' infringement of the '100
20 patent has been, and will continue to be, willful and deliberate, making this an exceptional
21 case under 35 U.S.C. § 285.

22 24. Plaintiffs have been and will continue to be irreparably harmed by the Ambu
23 Defendants' infringement of the '100 patent unless enjoined by this Court.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiffs pray for relief as follows:

26 A. That the Ambu Defendants, and each of them, be adjudged to have infringed the
27 '697 patent under 35 U.S.C. § 271, and that the '697 patent be adjudged to be valid and
28 enforceable.

1 B. That the Ambu Defendants, and each of them, be adjudged to have infringed the
2 '100 patent under 35 U.S.C. § 271, and that the '100 patent be adjudged to be valid and
3 enforceable.

4 C. That the Ambu Defendants, their subsidiaries, affiliates, officers, agents,
5 servants, employees and attorneys, and all those persons in active concert or participation with
6 any of them be permanently restrained and enjoined under 35 U.S.C. § 283 from directly and
7 indirectly infringing the '697 and '100 patents;

8 D. That the Court award Plaintiffs recovery of damages to compensate them for the
9 Ambu Defendants' infringement of the '697 and '100 patents, pursuant to 35 U.S.C. § 284;

10 E. That the Ambu Defendants be adjudged to have willfully infringed the '697 and
11 '100 patents under 35 U.S.C. § 271, and that the Court treble the amount of actual damages
12 pursuant to 35 U.S.C. § 284;

13 F. That this action be adjudged an exceptional case, and that the Court award
14 Plaintiffs their reasonable attorney's fees incurred in this action, pursuant to 35 U.S.C. § 285;

15 G. That the Court assess pre-judgment and post-judgment interests and costs of suit
16 against the Ambu Defendants, and award such interests and costs to Plaintiffs pursuant to 35
17 U.S.C. § 284; and

18 H. That Plaintiffs have such other and further relief as this Court may deem just and
19 proper.

20 Respectfully submitted,

21 KNOBBE, MARTENS, OLSON & BEAR, LLP

22
23 Dated: October 15, 2007

By: 

John B. Sganga
Frederick S. Berretta
Joshua J. Stowell

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25
26 Attorneys for Plaintiffs
THE LARYNGEAL MASK COMPANY LTD.
27 and LMA NORTH AMERICA, INC.
28

DEMAND FOR JURY TRIAL

Plaintiffs The Laryngeal Mask Company Ltd. and LMA North America, Inc. hereby demand a trial by jury as to all issues triable by jury, specifically including, but not limited to, the infringement of United States Patents Nos. 5,303,697 and 7,156,100.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: October 15, 2007

By: 

John B. Sganga
Frederick S. Berretta
Joshua J. Stowell

Attorneys for Plaintiffs
THE LARYNGEAL MASK COMPANY LTD.
and LMA NORTH AMERICA, INC.

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ORIGINAL

JS-44

(Rev. 07/89)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

I (a) PLAINTIFFS

THE LARYNGEAL MASK COMPANY LTD., and
LMA NORTH AMERICA, INC.

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Republic of Seychelles
(EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANTS

AMBU A/S, AMBU A/S, AMBU LTD., and AMBU SDN. BHD.

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT
(IN U.S. PLAINTIFF CASES ONLY)

Country of Denmark

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

John E
KNOBI
550 W
San Di
(619) 2

ATTORNEYS (IF KNOWN)

unknown

'07 1988 DMS (NLS)

II. BASIS

☐ U.S. Gov

UNITED STATES
DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

☐ 20 U.S. Gov

143503 - SR

IV. CAUSE JURISDICTION

October 15, 2007
13:20:50

This:

V. NATURE

☐ 110 Insura

Civ Fil Non-Pris

☐ 120 Marini

USAO #: 07CV1988 CIV. FIL.

☐ 130 Miller

Judge.: DANA M SABRAW

☐ 140 Nego

Amount.:

\$350.00 CK

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Total -> \$350.00

FROM: THE LARYNGEAL MASK CO. V. AMBU
CIVIL FILING

TIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

	PT	DEF		PT	DEF
of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
or Subject of a Foreign	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

ILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE

odes 35 U.S.C. §§ 271 and 281.

FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reappointment
<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 630 Liquor Laws	<input checked="" type="checkbox"/> 830 Patent	<input type="checkbox"/> 450 Commerce/ICC Rates/etc.
<input type="checkbox"/> 640 RR. & Truck	<input type="checkbox"/> 810 Trademark	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 650 Airline Regs	<input type="checkbox"/> SOCIAL SECURITY	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 660 Occupational Safety/Health	<input type="checkbox"/> 861 HIA (13958)	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 690 Other	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 850 Securities/Commodities Exchange
<input type="checkbox"/> LABOR	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 875 Customer Challenge 12 USC
<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 720 Labor/Mgmt. Relations	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 892 Economic Stabilization Act
<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> FEDERAL TAX SUITS	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act		<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
		<input type="checkbox"/> 950 Constitutionality of State
		<input type="checkbox"/> 890 Other Statutory Actions

VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)

☒ 1 Original Proceeding ☐ 2 Removal from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER f.r.e.p. 23

DEMAND \$

Check YES only if demanded in complaint:

JURY DEMAND: ☒ YES ☐ NO

VIII. RELATED CASE(S) IF ANY (See Instructions): JUDGE

Docket Number

DATE October 15, 2007

SIGNATURE OF ATTORNEY OF RECORD

#143503 \$350.

ODMA\PCDOCS\WORDPERFECT\22816\1 January 24, 2000 (3:10pm)

10/15/07